

Quick Summary:

The chapter on *social media and free speech* in *American Public School Law* by Kern Alexander and M. David Alexander explores how constitutional free speech rights apply to students and educators in the digital age. It emphasizes the tension between protecting expression online and maintaining school order, drawing on key court cases to illustrate evolving legal standards.

Core Themes of the Chapter

- **Extension of First Amendment Rights:**
Students retain free speech rights in public schools, but those rights are not absolute. The chapter examines how courts apply *Tinker v. Des Moines* (1969) — the landmark case establishing that student speech is protected unless it causes substantial disruption — to online and social media contexts.
 - **Off-Campus vs. On-Campus Speech:**
A major focus is whether schools can discipline students for speech made off-campus (e.g., on Twitter, Instagram, or TikTok). Courts have wrestled with whether online posts that reach the school environment fall under school authority. The chapter highlights differing rulings across jurisdictions.
 - **Cyberbullying and Harassment:**
The book discusses how schools balance free speech with their duty to protect students from harassment and bullying online. It notes that cyberbullying cases often test the limits of school authority, especially when speech originates outside school grounds.
 - **Teacher and Staff Speech:**
Educators' use of social media is also addressed. While teachers have free speech rights, their online activity can be restricted if it undermines professional responsibilities or disrupts the school environment.
 - **Recent Case Law:**
The chapter incorporates contemporary cases, including *Mahanoy Area School District v. B.L.* (2021), where the Supreme Court ruled that a cheerleader's off-campus Snapchat post criticizing her school was protected speech. This case clarified that schools' authority over off-campus speech is limited, though not eliminated.
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Legal Principles Highlighted

- **Substantial Disruption Test:**
Courts continue to apply *Tinker's* disruption standard, but defining “disruption” in the digital era is complex since online speech can spread rapidly and unpredictably.
- **Balancing Rights and Responsibilities:**
The chapter underscores the need to balance student expression with schools' responsibility to maintain safety, order, and respect for others' rights.

- **Evolving Jurisprudence:**

Because social media is relatively new, the law is still developing. The authors stress that administrators must stay informed about changing precedents.



Practical Implications for Schools

- Administrators must craft **clear policies** on social media use that respect constitutional rights but also address cyberbullying and threats.
 - Discipline for online speech must be carefully justified under the *substantial disruption* standard.
 - Professional development for staff should include guidance on responsible social media use.
 - Schools should anticipate ongoing litigation and policy shifts as courts refine the boundaries of free speech in digital spaces.
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***In essence:** The chapter frames social media as the new frontier of free speech in schools, where constitutional protections meet the realities of digital communication. It cautions educators and leaders to tread carefully, balancing rights with responsibilities in a rapidly evolving legal landscape.*

The chapter on social media and free speech in Kern and M. David Alexander's *American Public School Law* primarily focuses on how the First Amendment applies to student and teacher expression on online platforms, particularly when the speech originates off-campus.

The core challenge examined is balancing the individual right to free speech with the school's need to maintain a safe, orderly, and effective educational environment.¹



Key Legal Frameworks

The chapter's analysis is built upon several landmark U.S. Supreme Court precedents, with the central doctrine being:

- Tinker Standard (²Tinker v. Des Moines): This established that student speech can be regulated if school officials reasonably forecast it will cause a "material and substantial disruption" of school activities or invade the rights of others.³

The application of this standard is significantly complicated when the speech occurs off-campus via social media.

- Bethel Standard (\$Bethel\ School\ Dist.\ v.\ Fraser\$): This allows schools to prohibit speech that is lewd, vulgar, or plainly offensive in a school-sponsored context. Its applicability to off-campus social media remains a point of contention.
- Hazelwood Standard (\$Hazelwood\ School\ Dist.\ v.\ Kuhlmeier\$): This grants schools greater control over school-sponsored expression (e.g., school newspaper, theatrical productions) if the restriction is reasonably related to legitimate pedagogical concerns. This generally does not apply to a student's private social media.



Off-Campus Student Social Media Speech

A major focus of the chapter is the increasing legal struggle to define the boundary of a school's authority over a student's personal social media posts:

- The Nexus to School: Courts often try to determine if the off-campus social media post has a sufficient nexus to the school environment to justify disciplinary action.
 - Speech that directly threatens students or staff, constitutes true threats or harassment/bullying directed at the school community, or is intended to incite an on-campus disruption is most likely to be regulated.
 - Posts that are purely critical or offensive but do not translate into a physical or tangible threat or disruption are less likely to be subject to school discipline.
- The *B.L. v. Mahanoy* Case: More recent editions of the book would heavily feature the 2021 Supreme Court decision in ⁴ \$Mahanoy\ Area\ School\ Dist.\ v.\ B.L.\$ (the cheerleader's profane Snapchat post).⁵ This case affirmed that while schools may sometimes regulate off-campus speech, their ability to do so is more limited than their power to regulate on-campus speech. The Court suggested the school's interest is reduced because:
 - The school is not acting *in loco parentis* (in the place of a parent) off-campus.
 - Regulating off-campus speech would impose a nearly 24/7 surveillance burden on schools.
 - Schools should be a "marketplace of ideas" and protecting unpopular student expression is key.



Social Media and Teacher/Employee Speech

The chapter also discusses the distinct legal test applied to public school employees (teachers, administrators) and their social media posts:

- **Public Concern vs. Private Grievance (\$Pickering v. Board of Education\$):** A teacher's speech is protected if they are speaking as a citizen on a matter of public concern.⁶
 - If the speech relates to a matter of private employment interest (e.g., a petty grievance with a supervisor), it is generally not protected by the First Amendment.
- **Efficiency and School Operation:** Even if the speech is a matter of public concern, the court must balance the employee's free speech rights against the school's interest, as an employer, in promoting the efficiency of its public services.⁷ Highly disruptive or damaging posts that undermine a teacher's authority, professionalism, or the school's mission can still lead to disciplinary action.

Overall, the chapter highlights that social media has continuously challenged existing public school law, forcing courts to re-evaluate traditional principles of speech regulation, particularly regarding the concept of "on-campus" versus "off-campus" conduct.
